

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In re: ) Adversary Proceeding Case Number: 19-1324  
)  
) Bankruptcy Case No: 19-10412-JLG  
Ditech Holding Corporation. et. al, )  
Debtor. ) MOTION FOR PRELIMINARY INJUNCTION AND  
TEMPORARY RESTRAINING ORDER.  
)  
Samuel Rodriguez v. ) Emergency handling requested  
)  
Ditech Holdings and its Insider )  
)  
Successor Selene Finance LP. )  
) Assigned to the Hon. James L. Garrity

Creditor and Adversary Proceeding Plaintiff Samuel Rodriguez, Pursuant to Rule 65 of the Federal Rules of Civil Procedure, applicable to this matter through Rule 7065 of the Federal Rules of Bankruptcy Procedure, hereby submits his application requesting this court issues a Preliminary Injunction and Temporary Restraining Order in this matter, enjoining defendants from proceeding with any trustee sale or otherwise deprive Samuel Rodriguez of the property subject of his complaint.

**Background.**

1. Plaintiff has a pending Adversarial Proceeding Complaint alleging a prepetition fraudulent transfer of property for purposes of filing bankruptcy. Specifically, Plaintiff will prove

1 that the disputed asset in the form of a forward  
2 loan is not only subject to correction through  
3 the approved chapter 11 plan, it is additionally  
4 subject to an order of this court reversing the  
5 fraudulent transfer (purported sale) that took  
6 place within the statutory time period and for  
7 grossly under its value, which undisputedly  
8 classifies it as a fraudulent transfer.  
9

10 2. Plaintiff's relationship to defendants is through  
11 a mortgage loan, on property, which has served as  
12 primary residence to plaintiff for twenty years.  
13

14 3. Defendants have been served through counsel.  
15 Weil, Gotshal & Manges LLP as to Ditech Holdings  
16 LP. Tiffany and Bosco LP as to Selene Finance LP.  
17

18 4. A preliminary hearing is set for October 10<sup>th</sup> 2019  
19 at 11:00 am to accomplish the following according  
20 to the document titled "adversary proceeding  
21 primer" found on usbcourts.gov.  
22

23 a) The issues raised by the pleadings;

24 b) Pending and/or additional motions;  
25 discovery issues;

26 c) Any settlement discussions between the  
27 parties;  
28

1 d) The possibility of arbitration or  
2 mediation;

3 e) And the need for additional pretrial  
4 conferences.  
5

6 5. On October 8<sup>th</sup> at around lunchtime, Defendant  
7 Ditech, through counsel Weil, contacted plaintiff  
8 to request a continuance of such hearing to  
9 November 14<sup>th</sup> 2019 for its own private undisclosed  
10 reasons unrelated to Plaintiff.  
11

12 6. Plaintiff, in the interest of accommodating the  
13 court to the extent Ditech's request was related  
14 to an overflow of work to it, agreed to such  
15 continuance CONDITIONED one thing and one thing  
16 only. THE ABILITY, with defendants' assistance TO  
17 MAINTAIN THE STATUS QUO, by obtaining a TRO that  
18 extends into the time period needed or the  
19 rescheduling of the adversarial complaint.  
20

21 7. In addition to the above Ditech's counsel and  
22 Plaintiff discussed settlement. The conversation  
23 ended with the covenant that Ditech's counsel  
24 would speak to his superiors and get back to  
25 Plaintiff on the condition for continuance and  
26 settlement as expeditiously as possible. Somehow  
27  
28

1 Ditech's counsel took that as a yes to the  
2 continuance and jumped the gun on informing the  
3 court that Plaintiff had agreed to such  
4 continuance. This is incorrect in its present  
5 form and Plaintiff informed the court immediately  
6 after receiving such notice. Plaintiff CANNOT  
7 agree to such a continuance without a TRO.  
8

9 8. As Plaintiff's situation stands, a preliminary  
10 Restraining order was issued by a local court  
11 regarding this matter based on merits of course  
12 but mainly due to the ongoing proceedings in New  
13 York. Such preliminary order, by its nature is  
14 limited in time. The time allotted was  
15 contemplated to protect plaintiff through the  
16 Preliminary hearing in the New York court.  
17 Subsequent to that hearing Plaintiff was supposed  
18 to report to the local court the status of the  
19 matter and seek, at that time, an issuance of a  
20 Temporary restraining order adequate to the time  
21 period needed to litigate the adversarial  
22 proceeding in New York.  
23

24 9. With Ditech's need for a continuance of the  
25 preliminary hearing, Plaintiff will find himself  
26  
27  
28

1 in an unprotected period, in which Defendant  
2 Selene Finance LP would be free to further damage  
3 Plaintiff by performing a wrongful foreclosure on  
4 his home, based on the pending fraudulent  
5 transfer before the US Bankruptcy court. Such  
6 wrongful foreclosure sale is currently scheduled  
7 for October 30<sup>th</sup> 2019.  
8

9 10. The current preliminary restraining order expires  
10 on October 18<sup>th</sup> 2019 and without being able to  
11 report a status as originally presented to the  
12 local court, Plaintiff fears a renewal, extension  
13 or issuance of a TRO by that local court would  
14 not be granted or procedurally NOT granted in  
15 time to stop irreparable harm to Plaintiff.  
16

17 11. Facts above render United States Bankruptcy Court  
18 for the Southern District of New York as the most  
19 proper forum to request the necessary Preliminary  
20 Injunction and Temporary Restraining Order.  
21  
22

23 Legal Standard.

24 The Rule states that a Bankruptcy Court may issue a preliminary  
25 injunction where the moving party demonstrates:  
26

- 27 I. A substantial likelihood of success on the  
28 merits.

1           II. That irreparable injury will be suffered unless  
2           the injunction issues.

3           III. The threatened injury to the movant outweighs  
4           whatever damage the proposed injunction may cause  
5           the opposing party;

6           IV. If issued, the injunction would not be adverse to  
7           the public interest.  
8

9  
10          Plaintiff incorporates all allegations made on the  
11 complaint and submits as follows for incise (I); Defendant  
12 Ditech, though a straw agent specializing in the sale of these  
13 type of assets of the bankruptcy estate, Mission Global LLC.  
14 Sold and FRAULENTLY TRANSFERRED the subject loan and future  
15 asset of the bankruptcy estate to an insider as defined on 11  
16 USC § 101(31), now defendant Selene Finance LP and its  
17 associates. This transaction was consummated on September 4<sup>th</sup>  
18 2018 well within the statutorily period for fraudulent transfers  
19 based on the filing date of the underlying bankruptcy case. This  
20 transaction was done solely for the purpose of avoiding it being  
21 a part of the estate and subject to creditors, beginning with  
22 Plaintiff/creditor Samuel Rodriguez.  
23  
24

25          Additionally this transaction was done for grossly and  
26 highly egregiously less than the value of the future bankruptcy  
27 estate asset as Representatives at Mission Global report the  
28

1 Effective sales price of the loan was around \$ 10,000.00 (ten  
2 Thousand Dollars 00/00) adjusted for minor calculations in the  
3 formula for net present value and such.

4 The material facts above plus others that will be submitted, as  
5 discovery progresses constitute a fraudulent transfer under 11  
6 USC § 548, and subject to this adversarial proceeding, thus  
7 necessitating the issuance of provisional remedies to insure the  
8 wellbeing of plaintiff and the bankruptcy estate.  
9

10  
11 Plaintiff incorporates all allegations made on the  
12 complaint and submits as follows for incise (II); If Defendants  
13 are not enjoined from holding the Trustee's Sale on October 30th  
14 2019, and any other they intent to notice while this adversarial  
15 complaint is ongoing, Plaintiff Samuel Rodriguez will lose all  
16 defenses to any Trustee's Sale and will lose the Property  
17 without a chance to litigate the issues set forth in the  
18 Adversarial Complaint. Plaintiff Samuel Rodriguez Property is  
19 unique and the harm of losing the Property is not speculative;  
20 rather, the harm is unquestionably imminent.). Because this case  
21 involves real property, his home of 20 years, which is by its  
22 nature unique, Plaintiff Samuel Rodriguez cannot possibly be  
23 compensated by mere money damages. Moreover, the relief he seeks  
24 is mandated by statute to prevent fraudulent transfers.  
25  
26  
27  
28

1 Plaintiff incorporates all allegations made on the complaint and  
2 submits as follows for incise (III); There is no damage to  
3 Defendants, in fact as the Bankruptcy Estate value would  
4 increase by reversing a loan what was sold for then thousand  
5 dollars which is worth half a million, it immediately benefits  
6 to the tune of \$ 490,000.00 Four hundred thousand and ninety  
7 dollars in increased value to the Bankruptcy Estate. The fact  
8 that this fraudulent transfer was done prepetition for reasons  
9 which were obviously to defraud creditors and facilitate the  
10 Filing is something that the court would have to decide what to  
11 do on and if Plaintiff Samuel Rodriguez is entitled to damages  
12 for the induced hardship it created. For purposes of issuing the  
13 TRO however the bankruptcy estate, The debtor and defendants all  
14 benefit, outweighing by far the damage that would be created to  
15 Plaintiff were this TRO not be issued and strongly tipping the  
16 balance of equities in favor of Plaintiff Samuel Rodriguez for  
17 immediate issuance of the requested relief.

21  
22 Plaintiff incorporates all allegations made on the  
23 complaint and submits as follows for incise (IV); The public  
24 interest will not be served in this case if Defendants are  
25 permitted to push forward with any Trustee's Sale. In fact the  
26 only way that the public interest would be served is if the  
27 underlying trustee sale notice is vacated by the TRO since the  
28



1 fact of it being proliferated on our internet dependent society,  
2 damages not only the Plaintiff Samuel Rodriguez but a countless  
3 individuals (some of which have been knocking on Plaintiff's  
4 front door insatiably) who think they are looking at a valid  
5 sale as scheduled and make in unquantifiable arrangements and  
6 sacrifices to keep attending these sales. Indeed, if the TRO  
7 does not issue, again, Plaintiff will be left with no legal  
8 remedies to preserve his Property. How can the public interest  
9 be served if Defendants are entitled to move forward with the  
10 Trustee's Sale? Indeed, allowing Defendants to push forward  
11 foreclosure without having to account for its fraud will harm  
12 the public interest.  
13  
14  
15

#### 16 IV. CONCLUSION

17  
18 A TRO is justified in this case. It merely keeps the status quo  
19 providing the parties ample time to sort out what happened up  
20 until now, at the hearing tomorrow October 10<sup>th</sup> 2019 or the  
21 requested continued date of November 14<sup>th</sup> 2019, and what is  
22 happening regarding the underlying merits of the adversarial  
23 complaint, its rightful place in the bankruptcy estate, and who  
24 holds it after this adversarial proceeding is disposed of, which  
25 is very likely not to be the defendant Selene LP in this case  
26 but instead the bankruptcy estate and/or the beneficiary of the  
27  
28

1 approved plan in the CH 11 case or whomever the court decides  
2 on. Plaintiff will invariably suffer immediate and irreparable  
3 harm if he loses his Property. Plaintiff has a probable  
4 likelihood of success on the merits of his claims, the most  
5 formative factor that this Court must consider. Additionally,  
6 the balancing of hardships clearly favors the Plaintiff in this  
7 case. Bankruptcy law mandates the requested remedy here. Simply  
8 postponing the scheduled Trustee's Sale for a few months and if  
9 the court please cancel the trustee sale notice altogether to  
10 allow the parties to litigate the issues alleged in the  
11 Adversarial Complaint is in the best interest of all parties,  
12 including Defendants. Finally, the public's interest will be  
13 well served by the issuance of the TRO, as it will ensure that  
14 people like plaintiff do not unwittingly lose their property  
15 rights.  
16  
17  
18

19  
20 For the foregoing reasons, Plaintiff, Samuel Rodriguez  
21 requests that this Court issue on an emergency basis a  
22 Preliminary injunction and Restraining order enjoining  
23 Defendants from holding the Trustee's Sale currently scheduled-  
24 for October 30<sup>th</sup> 2019, cancel the underlying trustee sale notice  
25 and issue Temporary Restraining order to enjoin Defendants from  
26 noticing any trustee sale while this adversarial complaint  
27  
28

1 thwarting any right or title to the underlying note due to fraud  
2 and fraudulent conveyance actions, is fully litigated.  
3

4 RESPECTFULLY SUBMITTED ELECTRONICALLY, this ninth day of  
5 October, 2019  
6  
7

8 *Samuel Rodríguez*  
9

10 Samuel Rodriguez-520-999-7900 oilbiz@att.net  
11  
12  
13

14 Copies of the foregoing were hand delivered, and/or delivered electronically  
15 via email, and/or facsimile, and/or USPS to the following parties:  
16

17 Ditech Holding Co  
18 Through its counsel at Weil LLP  
19 David Hill IV David.Hill@weil.com  
20 767 Fifth Avenue. New York, NY 10153

21 Selene Finance LP  
22 Through it's Counsel at Tiffany & Bosco PA  
23 Leonard J. McDonald LJM@tblaw.com  
24 2525 E. Camelback Rd. Phoenix AZ 85016

25  
26  
27  
28  
By: *Samuel Rodríguez.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

---

Samuel Rodriguez,

Plaintiff,

v.

Ditech Holdings and its Insider Successor Selene  
Finance LP,

Defendants.

**Adversary Proceeding Case Number: 19-1324**

**Bankruptcy Case No: 19-10412-JLG**

**(PROPOSED) ORDER GRANTING  
TEMPORARY RESTRAINING  
ORDER AND INJUNCTION AGAINST  
ANY TRUSTEE SALE.**

---

This matter is before the Court on the Motion for Preliminary Injunction and Temporary Restraining Order filed on October 9, 2019 [Docket No. ]. And good cause appearing;

IT IS HEREBY ORDERED that pursuant to Rule 65 of the Federal Rules of Civil Procedure (applicable to this proceeding by Rule 7065 of the Federal Rules of Bankruptcy Procedure), the Court finds that a Temporary Restraining Order shall be entered against the defendants.

This Injunction and Restraining order shall remain active while the adversarial proceeding in this court is in place, and remain in effect until its full disposition, or this date \_\_\_\_\_.

Dated: \_\_\_\_\_, 2019

---

**Honorable Hon. James L. Garrity  
United States Bankruptcy Judge**